

AMENDED IN SENATE AUGUST 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1415

Introduced by ~~Committee on Accountability and Administrative Review (Frazier (Chair), Achadjian (Vice Chair), Buchanan, Ian Calderon, Cooley, Lowenthal, Medina, Quirk-Silva, and Salas)~~ Assembly Member John A. Pérez

(Coauthors: Assembly Members Bocanegra, Frazier, Gray, and Levine)

(Coauthor: Senator De León)

March 20, 2013

An act to amend Section 11340.5 of the Government Code, *and to add Section 7109.5 to the Public Contract Code*, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1415, as amended, ~~Committee on Accountability and Administrative Review~~ John A. Pérez. ~~Administrative procedures; regulations; determinations; judicial review; corrosion prevention and mitigation projects.~~

(1) Existing law contains various provisions relating to contracts by a public entity for the performance of public works of improvement, including provisions for the payment of progress payments and the disbursing and withholding of retention proceeds.

This bill would require a public entity that awards a contract for construction, alteration, demolition, installation, repair, or maintenance work after January 1, 2017, that is paid for in whole or in part with state funds, to require contractors and subcontractors performing corrosion prevention and mitigation work to comply with specified

standards to be adopted by the Director of the Department of Industrial Relations in consultation with the Department of Toxic Substances Control. This bill would also exempt work on plumbing and piping systems, performed by specified persons, from the standards adopted under these provisions.

~~The~~

(2) The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. ~~The act provides that if the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation. Existing law allows an interested person to obtain judicial review of a given determination by filing a written petition with the court within 30 days of the date of its publication.~~

This bill would ~~extend that filing time to 45 days.~~ make technical, nonsubstantive changes to of the act provisions.

(3) Because this bill would require local entities to comply with additional contracting regulations for these projects, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) California's water and transportation infrastructure needs*
- 4 *will continue to increase dramatically. The cost of maintaining*

1 *the health and well-being of California and Californians is directly*
 2 *linked to the safety of its water pipelines and storage tanks, bridges,*
 3 *roads, and industry. Ensuring this depends primarily on two*
 4 *factors: (1) the performance of proper, timely preventive*
 5 *maintenance by certified workers and (2) the extent and severity*
 6 *of structural corrosion or other deterioration.*

7 *(b) According to a 2012 American Society of Civil Engineers*
 8 *study, in the “1950s and 1960s, California spent 20 cents of every*
 9 *dollar on capital projects. By the 1980s, that figure dropped to*
 10 *less than five cents on the dollar. Current estimates put*
 11 *infrastructure investment at around a penny on the dollar.*
 12 *Currently, 2,978 of the 24,812 bridges in California (12 percent)*
 13 *are considered structurally deficient and roughly 8,000 of them*
 14 *are older than the recommended 50-year lifespan. Additionally,*
 15 *corrosion was found to be at a critical level on the suspension*
 16 *span of the new \$6.5 billion San Francisco-Oakland Bay Bridge.*

17 *(c) As California prepares for more than \$7 billion in*
 18 *investments in the state’s water infrastructure, preventative*
 19 *measures like corrosion prevention applications should be a part*
 20 *of all new construction, retrofitting, and maintenance work. This*
 21 *protects against deterioration of the infrastructure itself, as well*
 22 *as environmental degradation from leakage, breaks, or release of*
 23 *toxic materials. When steel corrodes, heavy metals are released*
 24 *into storage tanks, pipelines, or other structures, which is*
 25 *hazardous in the case of drinking water.*

26 *(d) Corrosion prevention work is necessary for long-term*
 27 *environmental protection. When a coating is properly applied, it*
 28 *can last 10 to 20 years, depending on the product. When applied*
 29 *incorrectly, repairs are necessary within 1 to 3 years, requiring*
 30 *untold costs. Each time the structure surfacing needs to be*
 31 *repaired, the existing coating must be removed. When this removal*
 32 *is not conducted by a competent workforce, the surrounding*
 33 *environment can be exposed to lead or hazardous materials*
 34 *contamination.*

35 *(e) The Society for Protective Coatings (SSPC) states that 80*
 36 *percent of coating failures are due to human error. Whether it be*
 37 *from improper surface preparation, improper coating selection,*
 38 *improper applications, improper drying, curing, or overcoating,*
 39 *a certified professional can help prevent these failures. When*
 40 *certified by an independent 3rd party, such as NACE or SSPC,*

1 *there is assurance that experienced professionals will complete*
2 *the project on time and according to the industry specifications.*

3 **SECTION 1.**

4 *SEC. 2.* Section 11340.5 of the Government Code is amended
5 to read:

6 11340.5. (a) A state agency shall not issue, utilize, enforce,
7 or attempt to enforce any guideline, criterion, bulletin, manual,
8 instruction, order, standard of general application, or other rule,
9 which is a regulation as defined in Section 11342.600, unless the
10 guideline, criterion, bulletin, manual, instruction, order, standard
11 of general application, or other rule has been adopted as a
12 regulation and filed with the Secretary of State pursuant to this
13 chapter.

14 (b) If the office is notified of, or on its own, learns of the
15 issuance, enforcement of, or use of, an agency guideline, criterion,
16 bulletin, manual, instruction, order, standard of general application,
17 or other rule that has not been adopted as a regulation and filed
18 with the Secretary of State pursuant to this chapter, the office may
19 issue a determination as to whether the guideline, criterion, bulletin,
20 manual, instruction, order, standard of general application, or other
21 rule, is a regulation as defined in Section 11342.600.

22 (c) The office shall do all of the following:

23 (1) File its determination upon issuance with the Secretary of
24 State.

25 (2) Make its determination known to the agency, the Governor,
26 and the Legislature.

27 (3) Publish its determination in the California Regulatory Notice
28 Register within 15 days of the date of issuance.

29 (4) Make its determination available to the public and the courts.

30 (d) Any interested person may obtain judicial review of a given
31 determination by filing a written petition requesting that the
32 determination of the office be modified or set aside. A petition
33 shall be filed with the court within ~~45~~ 30 days of the date the
34 determination is published.

35 (e) A determination issued by the office pursuant to this section
36 shall not be considered by a court, or by an administrative agency
37 in an adjudicatory proceeding if all of the following occurs:

38 (1) The court or administrative agency proceeding involves the
39 party that sought the determination from the office.

1 (2) The proceeding began prior to the party's request for the
2 office's determination.

3 (3) At issue in the proceeding is the question of whether the
4 guideline, criterion, bulletin, manual, instruction, order, standard
5 of general application, or other rule that is the legal basis for the
6 adjudicatory action is a regulation as defined in Section 11342.600.

7 *SEC. 3. Section 7109.5 is added to the Public Contract Code,*
8 *to read:*

9 *7109.5. (a) A public entity, as defined in Section 7200, that*
10 *awards a contract for construction, alteration, demolition,*
11 *installation, repair, or maintenance work after January 1, 2017,*
12 *that is paid for in whole or in part with state funds shall require*
13 *all contractors and subcontractors performing corrosion*
14 *prevention and mitigation work to comply with the standards*
15 *adopted pursuant to this section.*

16 *(b) Contractors and subcontractors performing contracts for*
17 *construction, alteration, demolition, installation, repair, or*
18 *maintenance work awarded after January 1, 2017, that are paid*
19 *for in whole or in part with state funds shall, when performing*
20 *corrosion prevention and mitigation work, comply with the*
21 *standards adopted pursuant to this section.*

22 *(c) On or before January 1, 2016, the Director of the*
23 *Department of Industrial Relations in consultation with the*
24 *Department of Toxic Substances Control, shall adopt regulations*
25 *establishing standards for the performance of corrosion prevention*
26 *and mitigation work on public projects that reflect industry best*
27 *practices. Such industry best practices shall include, but are not*
28 *limited to, all of the following:*

29 *(1) Use of trained and certified personnel for surface*
30 *preparation and application of protective coatings and linings to*
31 *steel and concrete surfaces.*

32 *(2) Use of inspectors to ensure best practices and standards*
33 *are met.*

34 *(3) A plan to prevent environmental degradation, including, but*
35 *not limited to, careful handling and containment of hazardous*
36 *materials such as lead paint.*

37 *(d) For purposes of this section:*

38 *(1) "Trained and certified personnel" means both of the*
39 *following:*

1 (A) To the maximum extent feasible, workers performing surface
2 preparation and application of protective coatings and linings to
3 steel and concrete surfaces who are classified as journey-level
4 workers and are certified by an organization generally accepted
5 in the industry as meeting the NACE 13/ACS 1 standard or a
6 similar standard that is generally accepted in the industry.

7 (B) Workers performing surface preparation and application
8 of protective coatings and linings to steel and concrete surfaces
9 who are classified as apprentices and are registered in an
10 industrial apprenticeship program approved by the Division of
11 Apprenticeship Standards that provides training to meet the NACE
12 13/ACS 1 standard or a similar standard that is generally accepted
13 by the industry.

14 (2) “NACE 13/ACS 1 standard” means the Society for Protective
15 Coatings/NACE International standard for an industrial coating
16 and lining application specialist.

17 (e) The standards adopted pursuant to this chapter shall not
18 apply to work on plumbing and piping systems performed by either:

19 (1) Skilled journey persons who are graduates of an
20 apprenticeship program for the applicable occupation that was
21 either approved by the Chief of the Division of Apprenticeship
22 Standards pursuant to Section 3075 of the Labor Code or located
23 outside California and approved for federal purposes pursuant to
24 the apprenticeship regulations adopted by the federal Secretary
25 of Labor.

26 (2) Apprentices registered in an apprenticeship program for
27 the applicable occupation that was approved by the Chief of the
28 Division of Apprenticeship Standards pursuant to Section 3075 of
29 the Labor Code.

30 SEC. 4. If the Commission on State Mandates determines that
31 this act contains costs mandated by the state, reimbursement to
32 local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.